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Agenda item 153
IRAQI AGGRESSION AND THE CONTINUED OCCUPATION OF KUWAIT IN FLAGRANT VIOLATION OF THE CHARTER OF THE UNITED NATIONS

SECURITY COUNCIL
Forty-sixth year

Letter dated 5 June 1991 from the Chargé d'affaires a.i. of the Permanent Mission of Qatar to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the text of the Press Communiqué issued on 3 June 1991 by the Ministerial Council of the Gulf Cooperation Council concerning the situation in the region following the Gulf war.

I should be grateful if you would have the text of this letter and its annex circulated as a document of the General Assembly, under agenda item 153, and of the Security Council.

(Signed) Nassir Abdelaziz AL-NASSER
Chargé d'affaires a.i.

ANNEX

Press Communiqué issued on 3 June 1991 by the Ministerial Council of the Gulf Cooperation Council at its thirty-ninth session, held at Khubar, Saudi Arabia, on 2 and 3 June 1991

The Ministerial Council held its thirty-ninth session on 2 and 3 June 1991, at Khubar, Saudi Arabia, under the chairmanship of His Excellency Mr. Mubarak Bin Ali al-Khatir, Minister for Foreign Affairs of Qatar, and with all members in attendance:

His Excellency Mr. Rashid Bin Abdullah al-Nuaimi, Minister for Foreign Affairs of the United Arab Emirates;

His Excellency Sheikh Mohammed Bin Mubarak Al Khalifa, Minister for Foreign Affairs of Bahrain;

His Royal Highness Prince Saud al-Faisal, Minister for Foreign Affairs of Saudi Arabia;

His Excellency Mr. Yousef Bin Alwai Bin Abdullah, Minister of State for Foreign Affairs of Oman;

His Excellency Sheikh Salem al-Sabah, Deputy Prime Minister and Minister for Foreign Affairs of Kuwait.

The Ministerial Council has reviewed recent developments in the region and the situation in the region in the light of the progressive implementation of the Security Council resolutions relating to the aggression of the Iraqi regime against the State of Kuwait. It reaffirms the need for the full implementation of resolutions enforcing the international rule of law without delay or procrastination.

The Council welcomes, in this connection, the adoption of Security Council resolution 692 (1991) establishing a Compensation Fund and a Commission to administer the Fund in accordance with Security Council resolutions 674 (1990), 686 (1991) and 687 (1991), which remind Iraq that under international law it is liable for any direct loss or damage, including damage to the environment, the depletion of natural resources and damage suffered by third States and their nationals and corporations, as a result of the illegal invasion and occupation of Kuwait by Iraq.

The Council further expresses its satisfaction at the establishment of a demilitarized zone on the boundaries between Kuwait and Iraq and the deployment of a United Nations observer force. It welcomes the formation of the Iraq-Kuwait Boundary Demarcation Commission in implementation of Security Council resolution 687 (1991).

While expressing its satisfaction at the maintenance of a firm international stance on the full and speedy implementation of the relevant Security Council resolutions, the Ministerial Council registers its great indignation and concern at the procrastination of the Iraqi authorities in implementing those resolutions relating to the release of Kuwaiti nationals and nationals of other countries detained in Iraq and at the disregard evinced by the Iraqi authorities for international efforts to secure the release of such prisoners and detainees. The Ministerial Council urges the Security Council to redouble the political pressures applied in order to compel the Iraqi regime to implement in full all of the United Nations resolutions relating to this humanitarian issue and ensure the return of detainees and hostages without delay, in accordance with the resolutions of the Security Council and the terms of the cease-fire.

The Council condemns the statements recently made by the Vice-President of the Iraqi regime, which betray aggressive and expansionist intentions that are incompatible with Iraq's obligations under the terms of the Security Council resolutions which led to the cease-fire. The Ministerial Council deplores the issuing of such statements, and it reaffirms the decisions taken by the Supreme Council at its past session in light of the fact that the security of the GCC States is an integral whole.

While pursuing consultations on relations with the Islamic Republic of Iran and while reaffirming its concern for the creation of a joint basis for constructive cooperation between the Gulf Cooperation Council and Iran, the Council looks forward to the inception of an era of cooperation that will serve the common interests of their peoples and advance the means of promoting prosperity and stability in the region.

The Council has followed with great interest the international efforts aimed at the establishment of a permanent peace and overall stability in the Arab region. Proceeding from a firm conviction and from its well-known and established policy of affirming all that may be conducive to the achievement of security and stability for the States of the Middle East region and to enabling them to continue to advance the growth, prosperity and development of their peoples, the Council welcomes the initiative of United States President George Bush aimed at the elimination of weapons of mass destruction from the Middle East region.

The Council expresses its full support for the peace efforts being made by the United States of America with a view to devising a just and comprehensive solution to the Arab-Israeli conflict and the question of Palestine on the basis of Security Council resolutions 242 (1967) and 338 (1973). The Council once again expresses its support for the proposal to convene an early peace conference, when the situation is ripe, to endeavour to bring an end to the Arab-Israeli conflict and achieve a just and comprehensive solution that will restore to the people of Palestine its legitimate rights in light of the attitudes implicit in the new international order based on cooperation and the validation of international legitimacy. In its concern to

support the peace process and promote the success of the efforts currently being made to bring an end to the Arab-Israeli conflict and find a just solution to the Palestine issue, the Council reaffirms that the GCC is, if invited, prepared to participate as an observer in whatever peace conference it is decided to convene, represented by its Secretary-General.

The Council notes with great concern the deterioration in security, health and living conditions in the occupied Arab territories with the continued Israeli occupation. The Council condemns the escalation of the repressive and violent practices in which the occupation authorities engage against civilians and the rising number of Palestinians killed, wounded and detained. The Council calls upon the international community to adopt a resolute stand in order to prevent the settlement policy being pursued by Israel in the occupied Arab territories from being maintained.

The Ministerial Council is following with great satisfaction the positive developments taking place in Lebanon and the achievements of the Lebanese Government in extending its authority over Lebanese territory. It reaffirms the support of the GCC States for the Taif Agreement, and it calls for the full and unconditional implementation of Security Council resolution 425 (1978) and for the withdrawal of Israeli forces from southern Lebanon without procrastination or delay. It recalls the resolution of the Arab Summit Conference on the establishment of a fund in support of Lebanon, and it urges the international community to contribute to it.

The Council welcomes the signing of the Treaty of Brotherhood, Cooperation and Coordination between the Syrian Arab Republic and the Lebanese Republic, since it will contribute to the development of relations between the two fraternal countries in such a way as to ensure the achievement of the objectives and aspirations of their peoples for stability and development. It further expresses the hope that this historic step towards securing the distinctive relations between the two countries will meet their concern for concerted action, cooperation and the coordination of efforts for the achievement of their common goals.

The Council is following with great concern the events taking place in Somalia. It calls upon all national forces to reach agreement on a national solution that will ensure the preservation of the unity and integrity of Somalia. The Council further hopes that security and stability will prevail in the entire area of the Horn of Africa.

The Ministerial Council has taken note of the results produced by the meetings of the Committee on Financial and Economic Cooperation and the Committee of Under-Secretaries at Ministeries of Finance in the GCC States held in order to give effect to the decision of the Supreme Council on expediting the implementation of the Economic Agreement with a view to rendering it of greater benefit to citizens of the GCC countries. The Council has stressed the need for the relevant committees to accomplish this task in an expeditious manner.

On the occasion of the tenth anniversary of the historic decision of Their Majesties and Their Highnesses to sign the Agreement establishing the Gulf Cooperation Council, of 25 May 1981, the Ministerial Council extends its most sincere congratulations to Their Majesties and Their Highnesses, the leaders of the GCC States, and it expresses the hope that the course adopted will realize the aspirations of citizens and all of the objectives embodied in the Statute in such a way as to affirm the cultural and civilizing contribution of the region to all mankind.

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Agenda item 43
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-sixth year

Letter dated 10 June 1991 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a letter dated 7 June 1991 addressed to you by His Excellency Osman Ertuğ, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 43, and of the Security Council.

(Signed) Mustafa AKSIN
Ambassador
Permanent Representative

ANNEX

Letter dated 7 June 1991 from Mr. Osman Ertuğ to the Secretary-General

I have the honour to refer to the letter dated 27 May 1991 addressed to you by His Excellency Mr. Rauf R. Denktaş, President of the Turkish Republic of Northern Cyprus, a copy of which is attached, concerning the recent developments in the mixed village of Pyla, situated in the buffer zone (see appendix).

I would be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 43, and of the Security Council.

(Signed) Osman ERTUĞ
Representative of the Turkish
Republic of Northern Cyprus

APPENDIX

Letter dated 27 May 1991 from Mr. Rauf Denktas to the Secretary-General

I would like to bring to your kind attention the latest developments in the village of Pyla, which are of great concern to us. As you are no doubt well aware, Pyla is the only village in the island co-inhabited by Turkish Cypriots and Greek Cypriots, with the special status of being in the United Nations-controlled Buffer Zone. Presently, Pyla has a mixed population of some 425 Turkish Cypriots and 750 Greek Cypriots. Admittedly, the mixed village of Pyla assumes special significance by virtue of constituting a test case for intercommunal relations.

On previous occasions I had the opportunity to convey to Your Excellency, through your Special Representative Mr. Camilion and UNFICYP Commander General Milner, the difficulties the Turkish Cypriot inhabitants of Pyla have been encountering. For quite some time now, the Turkish Cypriot inhabitants of Pyla have been under an economic siege. In line with its coercive policy of inhuman embargo and isolation against the Turkish Cypriot people, the Greek Cypriot Administration of Southern Cyprus continues to apply economic pressure on the Turkish Cypriots in Pyla with a view to weakening them economically while isolating them from the Turkish Republic of Northern Cyprus. As you may be well aware, Greek Cypriots who purchase any kind of goods from Turkish Cypriot villagers are arrested and face trial, and in addition to receiving heavy legal penalties, are branded as traitors for having defied the national policy of economic embargo imposed on the Turkish Cypriots.

Lately, the situation in Pyla, far from improving, has taken a turn for the worse. The Greek Cypriot side has extended its inhuman embargo in the economic sphere to the social, cultural and religious spheres. As evidence of this more hostile posture, in the first instance, we have witnessed the efforts on the part of the Greek Cypriots to bar the Yakif Trust administrators of the Turkish Republic of Northern Cyprus from constructing a minaret to the existing mosque in the village, through a campaign of distortion. This Greek Cypriot attempt to highly politicize the building of a minaret and their irrational reaction to it, is truly unwarranted considering that the Turkish Cypriot side showed no reaction to the Greek Cypriots' earlier restoration of two churches in the village.

Second, in Pyla there is only one telephone line connecting the village with the Turkish Cypriot side for public use and the Turkish Cypriot inhabitants of Pyla have access to a single telephone: that of the "Mukhtar" (Head Man). Attempts are being made by the Greek Cypriot Administration for the prevention of a project by the Turkish Cypriot Telecommunications Department to extend telephone services in the Turkish Cypriot houses at the village. The Turkish Cypriot side, as one of the two politically equal sides in Cyprus, intends to ensure the full enjoyment by the Turkish Cypriot

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inhabitants of the village of their inalienable right to freely communicate with their fellow nationals by improving the present telecommunication link. Whereas each Greek Cypriot household in the village has a telephone installed, and despite the fact that we have given due notification to UNFICYP as regards our intention, the Greek Cypriot Administration has reacted, once again, irrationally to our humanitarian endeavour; consequently stepping-up the Greek Cypriot military presence in the area and conducting dubious military activities, thereby raising the spectre of an escalation of tension in the area.

The military activities - which encompass a one kilometre radius due south of Pyla - being conducted under the guise of a so-called "military exercise", involve, in addition to the normal Greek Cypriot military presence in the area, a tank squadron reinforced by armoured carriers, anti-tank weapons and 25 to 30 soldiers in full battle gear. This posture, which undermines the military status quo in the area, constitutes a threat to the Turkish Cypriot inhabitants of Pyla. Despite having given notification to UNFICYP that their "military exercises" were scheduled for the week of 13 to 20 May, ending thereafter, the increased Greek Cypriot military presence in the area persists and fortification measures continue unabated.

In spite of all this, the Turkish Cypriot side has been following the developments in a calm and even-tempered manner and we have not reciprocated and taken any additional military measures which would have led to an escalation of tension in the area. However, it goes without saying that, the present situation in the area carries with it the risk of an escalation.

In bringing the dire developments in Pyla to your attention, I particularly wish to single out two aspects which are of special importance when viewed against the background of the ongoing search for an agreed solution of the Cyprus problem. First, in parallel to Your Excellency's Mission of Good Offices, the Turkish Cypriot side's posture has consistently been one of deconfrontation. The actions of the Greek Cypriots in Pyla, by contrast, have shown to us that the Greek Cypriot posture is one of confrontation.

Second, this unique village is in actual fact a place of constant tension due to the efforts of the Greek Cypriot Administration of Southern Cyprus to extend its sovereignty over the whole village of Pyla. As the recent developments have demonstrated, even in this mixed village in the Buffer Zone, the Greek Cypriot side is unwilling to tolerate and acknowledge the social, cultural, and religious rights of the Turkish Cypriot villagers, since the full enjoyment by the Turkish Cypriots of their rights and liberties comes into conflict with the Greek Cypriots' unacceptable objective of extending their sovereignty over Pyla. Our position is that by virtue of its equal political status in Cyprus, the Turkish Cypriot side has jurisdiction, in parallel with the Greek Cypriot side, in Pyla, and we have no intention of forgoing this jurisdiction.

It should also be stressed that the Greek Cypriot side, by escalating its hostile policy and insisting on the path of confrontation, is once again acting in blatant contravention of paragraph 5 of Security Council resolution 649 (1990), which calls upon "the parties concerned to refrain from any action that could aggravate the situation". Any escalation of tension in Pyla will set a bad example and constitute an obstacle in the way of facilitating an agreed settlement of the Cyprus problem. It is obvious that "Pyla" has now become a metaphor for the unwillingness of the Greek Cypriots to live together and share power with the Turkish Cypriots. We now expect that UNFICYP takes the necessary steps for the restoration of the normal conditions and status quo in Pyla.

(Signed) Rauf R. DENKTAŞ
President

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FINANCING OF THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the financing of the United Nations Observer Mission in El Salvador (ONUSAL) (A/45/242/Add.1). During its consideration of the item, representatives of the Secretary-General provided additional information to the Advisory Committee.

2. ONUSAL was established by Security Council resolution 693 (1991) of 20 May 1991, which approved the report of the Secretary-General (S/22494 and Corr.1 and Add.1) of 16 April 1991 and decided that the Mission should be established for an initial period of 12 months. With regard to the method of financing of ONUSAL, the Secretary-General recalls in paragraph 3 of his report, his recommendation to the General Assembly "that the cost of ONUSAL be considered an expense of the Organization to be borne by Member States in accordance with Article 17, paragraph 2, of the Charter of the United Nations and that the assessments to be levied on Member States be credited to a special account that would be established for this purpose".

3. As indicated in section II of the report, the Secretary-General entered into commitments not exceeding $611,300, under the authority granted to him in paragraph 1 (a) of General Assembly resolution 44/203 of 21 December 1989 relating to unforeseen and extraordinary expenses, to establish a small preparatory office in El Salvador for the period from 1 January to 30 June 1991. The initial costs of the preparatory office are incorporated in the cost estimates of ONUSAL.

4. According to section III of the report, the Secretary-General estimates that the cost of the ONUSAL operation for a period of 12 months would amount to $31,177,700 (gross) ($28,782,800 net), at full cost. The Committee notes that this estimate does not take into account the possible provision of facilities by the host country and voluntary contributions that may be received. A breakdown of this cost estimate is provided in annex I to the Secretary-General's report and supplementary information thereon in annex II. The proposed civilian staffing table of ONUSAL is contained in annex III and its deployment and cost estimate are provided in annex IV.

5. In paragraphs 7 to 11 of his report, the Secretary-General summarizes the operational plan for ONUSAL, including the verification tasks of the human rights component and the operating structure of the Mission. The general assumptions on which the cost estimates are based are contained in paragraphs 12 and 13 of the report. In this connection, the Committee was informed that the draft agreement between the Government of El Salvador and the United Nations on the status of ONUSAL is in the process of being finalized (see para. 14 below).

6. In section IV of his report, the Secretary-General states that to date no voluntary contributions have been received.

7. In section VII of his report, the Secretary-General recalls his conviction that the commencement of the verification of human rights by ONUSAL would promote a significant improvement in the human rights situation in El Salvador, and also would act as a positive impetus to the negotiations. The Secretary-General states that once there is agreement on the cease-fire, it is envisaged that the United Nations will be called upon to play a broader role towards the achievement of peace in the region. The Advisory Committee notes from paragraph 18 of the report that it is the Secretary-General's intention, therefore, to submit to the General Assembly at an appropriate time a revised structure of ONUSAL, subject to the Security Council's approval of the subsequent phases or tasks of the Mission, and the revised resource requirements of an integrated operation.

8. The Advisory Committee undertook a careful and detailed examination of the cost estimates and supplementary information thereon as set out in annexes to the report. The Committee notes from paragraph 13 of annex II of the report that some of the equipment required for ONUSAL may possibly be provided from surplus ONUCA holdings or the ex-UNTAG equipment stockpiled at the United Nations Supply Depot in Pisa at below market cost, taking into account depreciation. The Committee was also informed of several other possibilities, including late phasing in of the Mission, secondment of staff from Member States and other reductions in military and civilian personnel costs, provision of some facilities by the host Government and transfer of vehicles from ONUCA and potential economies in the provision of communications equipment. The Committee is of the view that the above elements and other possible savings may considerably reduce the actual total budgetary requirements of ONUSAL.

9. The Committee inquired about the need to establish three separate offices in San Salvador, namely the Office of the Chief of Mission, the Office of the Director for Human Rights and the Regional Office for the region of San Salvador, as indicated in paragraph 11 of the report. The Committee was informed that the separation of the above offices was required due to the different functions and operational requirements; however, the three offices would be accommodated together in one building.

10. The Committee notes that mission subsistence allowance (MSA) is provided to all participants of ONUSAL at a rate of $63 per day for the first 30 days and thereafter at $60 for San Salvador and $45 elsewhere (annex II, para. 2). Upon inquiry, the Committee was informed that the current ICSC rates are $64 for San Salvador and $22 elsewhere for the first 30 days; thereafter the rates are $48 for San Salvador and $22 elsewhere. The Committee was not fully convinced of the need to grant ONUSAL staff substantially higher rates than for other United Nations staff in El Salvador and believes that there is a potential for savings under subsistence allowance.

11. The Committee is of the view that the estimate for travel (annex II, para. 4), which is based on an average of $4,000 per person for travel to and from the mission area by air, is high, taking into account that 50 per cent of the staff will originate from North America and 25 per cent each from South America and Europe, mostly not requiring an overnight stop-over. The Committee therefore believes that economies can be made under staff travel.

12. With regard to civilian personnel costs for international and local staff, the Committee notes that the salaries and staff costs of 146 international staff are based on New York standard costs for staff in the Professional category and above and General Service categories (annex II, para. 6), which are on average over and above those from other duty stations. The Committee is of the view that the average total remuneration of international staff, including salaries, common staff costs and mission subsistence allowance, for 12 months of about $98,558 per person is high. In this connection, the Committee was informed that less than half of the substantive international staff of ONUSAL would be redeployed from the United Nations system and that about 35 per cent of total international staff, namely human rights officers, would be recruited from outside. Furthermore, it is expected that a number of international staff would be seconded from Member States. Those so recruited or seconded would only be entitled to base salary and/or mission subsistence allowance and would thus not receive other benefits such as post adjustment given to existing United Nations staff deployed from other duty stations. The Committee therefore believes that there is a potential for substantial savings under civilian personnel costs.

13. As regards the planned phasing in of the Mission, the Committee was informed that ONUSAL would now be expected to start at the earliest in late July rather than on 1 July 1991 due to delays in the preparation of the Mission. The Committee notes that the one-month delay in the phasing in of 303 staff in phase I (annex II, para. 11) would result in further savings.

14. As regards the provision of premises and accommodation (annex II, para. 16), the Committee notes that the host Government has not provided office accommodation to ONUCA free of charge and it is therefore expected that ONUSAL would be required to obtain commercial leases for all its premises and accommodation requirements (annex II, para. 11). In this connection, the Committee recalls the model status-of-forces agreement for peace-keeping operations, contained in the report of the Secretary-General (A/45/594), which provides that the host Government should provide without cost to the United Nations peace-keeping operation premises as may be necessary for the conduct of the operation and for the accommodation of the staff. Accordingly, the Advisory Committee trusts that the Secretary-General will pursue every effort with the host country to obtain premises for the operation of the mission and the accommodation of the staff without cost to ONUSAL.

15. With regard to the purchase of vehicles (annex II, para. 17), the Committee is of the view that the provision of 142 vehicles, including 34 sedans and 100 land cruisers, for 146 international staff, 15 military officers and 64 police officers is a high ratio, taking into account that 70 per cent of international staff and 40 per cent of military personnel will be located at the mission headquarters and according to normal practice staff are not travelling alone. Moreover, the Committee was informed that up to 40 vehicles from ONUCA would be made available to ONUSAL at a depreciated price. The Committee notes that in view of the delay in the phasing in of the mission and the longer lead-time, the estimated costs for the lease of vehicle should decrease if the purchased vehicles were available earlier. The Committee therefore believes that significant economies can be realized in the estimate for the purchase and lease of vehicles.

16. With regard to the estimates for communications equipment (annex II, para. 18), the Committee was informed by representatives of the Secretary-General that the unit price of one stand alone PC network for data communications with radio repeaters and modem was overstated in the report and should be reduced from $100,000 to $72,000; similarly, the number of "Solar systems" should be reduced from 40 to 24, or from $46,000 to $27,600. The estimate for freight is consequently reduced by $4,000 leading to a total reduction of $50,400. The total corrected estimate is thus $2,064,000. The Committee was not convinced of the need for both a transportable earth station ($890,000) and an Inmarsat terminal ($45,000) since these are normally alternative types of equipment.

17. With regard to public information (annex II, para. 20 (c) and (i)), the Committee notes from paragraph 9 of the report that the Mission is to "initiate an information campaign to inform the public about the capabilities and limitations of the Mission under the Agreement". The Committee trusts that efforts will be made through the local media in particular to achieve these aims.

18. In view of the Committee's observations in paragraphs 8 to 17 above and taking into account the possible provision of premises by the host country and voluntary contributions by Governments and other savings, the Advisory Committee believes that the total amount of $23 million gross should prove

sufficient for ONUSAL for the period from 1 July 1991 to 30 June 1992. On that basis, the Advisory Committee recommends that the General Assembly appropriate and assess a total of $13.8 million gross ($13.0 million net) for the period from 1 July to 31 December 1991. In addition, the General Assembly may wish to authorize the Secretary-General, with the prior concurrence of the Advisory Committee, to enter into commitments not exceeding $9.2 million gross ($8.8 million net) for the remaining six-month period of ONUSAL from 1 January to 30 June 1992.

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SECURITY COUNCIL
Forty-sixth year

Letter dated 13 June 1991 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a letter dated 12 June 1991 addressed to you by His Excellency Osman Ertuğ, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 43, and of the Security Council.

(Signed) Mustafa AKSIN
Ambassador
Permanent Representative

Annex

Letter dated 12 June 1991 from Mr. Osman Ertuğ
to the Secretary-General

At a time when the search for a federal solution to the question of Cyprus is entering a decisive phase, my Government has sought the legal opinion of two eminent jurists, Professor E. Lauterpacht and Mr. Monroe Leigh, on the critical issue of the sovereignty of the component states of the future federal state, for the purpose of clarifying the legal issues involved.

I have the honour to enclose herewith the text of this legal opinion in the hope that it will facilitate your efforts in the search for a solution within the context of your good offices mission in Cyprus (see appendix).

I should be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 43, and of the Security Council.

(Signed) Osman ERTUĞ
Representative of the
Turkish Republic of Northern Cyprus

APPENDIX

Turkish Republic of Northern Cyprus Opinion

1. We have been asked to advise on certain questions regarding sovereignty in Cyprus and its relationship to proposals for a solution of the Cyprus problem along federal lines.

1. SOVEREIGNTY

2. The UN Security Council, in Resolution 649 (1990) of 12 March 1990, paragraph 1, reaffirmed its support for the 1977 and 1979 high level agreements between the leaders of the Greek Cypriot and Turkish Cypriot Communities

> in which they pledged themselves to establish a bi-communal Federal Republic of Cyprus that will safeguard its independence, sovereignty, territorial integrity and non-alignment, and exclude union in whole or in part with any other country and any form of partition or secession.

Paragraph 3 of the same Resolution called upon the leaders of the two Communities

> to pursue their efforts to reach freely a mutually acceptable solution providing for the establishment of a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects....

It is understood that both Communities adhere to this Resolution as a bass for negotiation.

3. The political question is how to achieve a federal system of which the details are acceptable to both sides. That is not a matter for this Opinion. The legal question is that of identifying the legal quality of each of the two Communities in the negotiations and in relation to the conceptual starting point for the construction of an effective federal system. That is the question that will first be considered here.

4. The circumstances of the present situation indicate quite clearly that the correct legal basis on which the two sides must approach the negotiations is that of equality of status, and, in particular, the possession of sovereignty in equal degree over the matters that are at present within the control of each Community. For this purpose sovereignty means the possession and exercise of real authority on an organized, orderly and continuing basis by those whom the populations of each area treat as their governments. A federal arrangement is one which by its nature involves a bringing together of the sovereignties of the component parts in association with a constitutionally controlled distribution of the powers of government between the federal and the communal components.

5. The justification for the acknowledgement of the sovereignty of each of the two Communities in Cyprus lies in the historical background to, and facts of, the present situation. Prior to 1878 Cyprus was under the legal and actual sovereignty of Turkey. From 1878 to 1914, sovereignty, though nominally Turkish, was actually exercised by Britain. In 1914 Britain annexed the island and in 1923, by Article 20 of the Treaty of Lausanne, Turkey

recognized that annexation. On the basis Britain acquired nominal in addition to actual sovereignty and retained it until 1960. Then, in implementation of the internationally agreed settlement reached in that year, Britain formally relinquished sovereignty over the Island of Cyprus in order to permit the establishment of "an independent sovereign Republic of Cyprus".

6. The circumstances in which Britain relinquished its sovereignty over Cyprus in 1960 should be borne in mind. The British Government had previously explicitly recognized that there were two national communities snaring the island and that "any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status." 526 Parl. Deb., H.C. (5th ser.) 1267-68 (1956). Indeed, in order to preserve the rights of the Turkish Cypriot Community, the British Government stood ready to "include partition among the eventual options." Id.

7. Eventually, an international solution was developed between Britain, Greece, Turkey and representatives of the Greek Cypriot and Turkish Cypriot Communities. In the international agreements concluded, Britain effectively agreed to relinquish sovereignty over Cyprus in favor of the two communities in exchange for their commitment to form a single government along agreed constitutional lines. Greece and Turkey joined Britain in agreeing to guarantee the constitutional structure of the new Republic of Cyprus. Upon the signing of these international agreements and the passage of the Cyprus Act, sovereignty over Cyprus was in effect transferred from Britain to the Greek Cypriot and Turkish Cypriot Communities and through them to the Republic of Cyprus as constituted under the Constitution of 1960. The compelling evidence that the two Cypriot Communities were an essential link in conferring sovereignty on the Republic of Cyprus is provided by the fact that all the basic documents from 1959-1960 were signed or initialled by the representatives of the two Cypriot Communities on behalf of their respective Communities.

8. The Constitution of 1960 was totally and inseparably founded upon the existence and political partnership of the

Greek and Turkish Communities within Cyprus. They were treated as equal in every way except in size. Some constitutional consequences flowed from that disparity. In representative bodies (the Council of Ministers and the House of Representatives) numbers were distributed on a proportional basis; likewise in the Civil Service and the Armed Forces. Otherwise, in relation to most important posts, where the principal position was held by a member of one Community, the deputy position had to be held by a member of the other. In the Supreme Constitutional Court, however, the two Communities were equally represented. In other important operational aspects of the Constitution the political equality of the two Communities was also recognized. The leading article of the Constitution on the executive power (Article 46) declared that "the executive power is ensured by the President and the Vice-President of the Republic" and certain important powers were conferred upon the President and the Vice-President to be exercised "conjointly". Moreover, in the enumeration of such powers as might be exercised by each of these two principal officers separately, each of them was given the identical "right of final veto on decisions of the Council of Ministers concerning foreign affairs, defense or security".

9. In short, sovereignty devolved on Cyprus in 1960 through a joint exercise of self-determination by the two communities and reposed in them jointly. There was no basis on which it could be said that either of the two Communities was sovereign and the other was not or that one Community enjoyed sovereignty or legal control over the other.

10. This constitutional arrangement, aptly described as a "functional federation" of two distinct national and political communities that happened at that time to live interspersed, is not without parallel in international experience. In Belgium, for example, where the Flemish-speaking Community constitutes about 60% of the population and the French-speaking community about 40%, the Constitution stipulates that the cabinet must be equally divided among Flemish and French ministers and that certain laws cannot be passed without separate majority votes by each national group in each chamber of the legislature. See Articles 1, 38 bis and 86 bis of the Belgian Constitution. In addition, the Constitution guarantees to the Flemish, French, and German-speaking Communities the right to legislate separately on matters of personal status,

language, social life, and education. Article 59 bis, as amended in 1980 and 1988.

11. Beginning with the Greek Cypriot President's attempt in 1963 to amend the Constitution to eliminate the political equality of the Turkish Cypriot Community, the unity that should have marked the operation of the Constitution was broken. Upon the unilateral denunciation by the Greek Cypriot Community of the legal basis on which the joint exercise of sovereignty by the two communities in Cyprus was predicated, the Constitution of 1960 self-evidently ceased to be operative and the "Republic of Cyprus" as constituted by the two communities ceased to exist. From 1964 onwards the two communities developed increasingly separate political and economic administrations and settlements, a process which culminated in 1975 with the complete regrouping of the two Communities in Cyprus into two geographically and administratively separate areas, a situation which is reflected in the "Exchange of Populations Agreement" of 2 August 1975. This fundamental condition was recognized in 1974 by the Foreign Ministers of Britain, Greece and Turkey in their Geneva Declaration of 30 July in which they jointly called for "the reestablishment of

constitutional government in Cyprus" and "an immediate return to constitutional legitimacy." In doing so,

> The Ministers noted the existence in practice on the Republic of Cyprus of two autonomous administrations (-) that of the Greek Cypriot community and that of the Turkish Cypriot community.

12. The "Republic of Cyprus" being no lcnger constitutionally or factually able to exercise sovereignty over the whole island, sovereignty over the island was divided and thereafter reverted to the authority actually in control of each of the two territories: the Greek Cypriot Community in the south and the Turkish Cypriot Community in the north.

13. The fact that the Greek Cypriot Community in the south has continued to operate under the title "Republic of Cyprus" is no more than a matter of nomenclature; it does not and cannot accord the Greek Cypriot Community a sovereignty in the north which it does not have the power to exercise. Nor can any such sovereignty result from any

international recognition of the Greek Cypriot Community as the "Republic of Cyprus". Correspondingly, the presence of Turkish forces in the north does not deprive the Turkish Cypriot Community of the actual power and jurisdiction, amounting in effect to sovereignty, which it exercises, and has since 1974 continuously and without effective challenge exercised, there. The Government of Turkey recognizes the Turkish Cypriot Community in the north as the sovereign government of the area, does not claim for itself or exercise power in that area, and expressly denies that northern Cyprus is part of Turkey. The absence of general de Jure international recognition of the status of the Turkish Cypriot Community under the name of the Turkish Republic of Northern Cyprus cannot deprive that Community of the sovereignty which as an indisputable matter of fact, it exercises in Northern Cyprus - a situation that is reflected in the extensive de facto relations that foreign States maintain with that Community.

14. The reversion of sovereignty in Cyprus to the two communities is confirmed both by logic and by international experience. The experience of the Mali Federation is particularly instructive. In 1959, Senegal and Soudan were

semi-autonomous members of the French Community which agreed to seek independence and form a federation. Each colony negotiated individually with France for its independence and the eventual agreements on the transfer of sovereignty were signed by France, Senegal and Soudan; however, the formal proclamation of independence was issued by the federation of Mali. Thus, as in the case of Cyprus, the federation and its component entities achieved sovereignty at the same time.

15. In 1960 Senegal withdrew from the Mali Federation, on the grounds that breaches by Soudanese federal government officers of basic terms of the constitution had rendered the constitution legally worthless. By 1961, Soudan, (which changed its name to Mali) and Senegal held separate seats in the United Nations and had been recognized as independent states by France, the United States, and several other countries. Thus there is no international legal impediment to, and indeed there is precedent for, the community of nations to recognize the reversion of sovereignty to the Greek Cypriot and Turkish Cypriot Communities.

2. THE PROPOSALS OF THE TWO SIDES

16. The possession of sovereignty by each of the two Communities has a direct bearing on the manner in which the powers of the federal authority and of the two component federated States is approached. The current Greek Cypriot proposals contain a number of expressions suggestive of the view that the Constitution will allocate powers to the Communities rather than that the Communities will be delegating powers to the new constitutional authority. Thus, for example, under heading VI Constitutional Arrangements, in paragraph 1(a) (General), the Greek Cypriots propose that "the Republic will be Federally organized, with substantial powers being reserved to the constituents"; and paragraph 2(d) states that "there will be no possibility of Federal encroachment on the powers and functions of the Provinces. The latter will be constitutionally entrenched, the initial allocation (presumably to each Community) having been agreed by the two sides."

17. All the passages just emphasized reflect the view that the powers of government have some central (albeit innominate) source and are, therefore, the objects of grant

to the "Provinces". They may be compared with the approach to be found in the Turkish Cypriot proposals, e.g. those of 6-7 April 1989, which indicated, inter alia, that "residual powers will remain with the federated republics". The proposed Turkish Cypriot structure reflects the position which is most common in federal systems, namely, that powers flow from the constitutional components to the federal government and that the residue of unallocated powers remains in the constitutional components.

3. THE PREVALENT PRACTICE IN FEDERAL SYSTEMS

18. International law is, of course, not directly concerned with the distribution of power within a federal system, but it certainly does not contain any prohibition on the creation or recognition of federal states in which the residuum of power is in the constituent units. In this connection one may recall the position in a number of significant federal systems which are presented, simply for convenience, in alphabetical order.

(i) Argentina

The constitution of Argentina provides in Article 104 that "The Provinces retain all powers not delegated by the Constitution to the Federal Government and those expressly reserved by special covenants at the time of their incorporation."

(ii) Australia

The Commonwealth of Australia Constitution Act, section 107, preserves the legislative competence of State Parliaments in respect of any topic that is not exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State. Article 107 provides:

> Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the Case may be.

As stated in R. v. Phillips (1970) 125 CLR 93, "this is simply an expression of an element that is implicit in any federal system in which defined powers are granted to the central authority and the undefined residue remains with the constituent parts."

(iii) Austria

The Federal Constitution provides in Article 15 (1) that "Insofar as a matter is not expressly assigned by the Federal Constitution to the 'Bund' for legislation or also execution, it remains within the Lander's autonomous sphere of competence".

(iv) Brazil

The Federal Constitution of 1988, Article 25, provides: "States are organized and governed by the constitutions and the laws that they adopt, the principles of the Constitution being observed.

(I) Spheres of authority not forbidden to them by this Constitution are reserved to the States..."

(v) Federal Republic of Germany

Prior to unification, Article 30 of the Federal Constitution (Grundgesetz) provided (and still provides) that:

> The discharge of the State's duties and competences is within the domain of the Lander insofar as this Constitution does not allow or provide for a different regulation.

Article 79, paragraph 3, provides that any revision of the constitution which would touch upon the status of the Lander and their fundamental powers is prohibited. The German Federal Constitutional Court has stated that this guarantee protects the sovereignty of the Lander in a federal State are States in the legal sense only if they retain a nucleus of inherent competences of which they cannot be deprived". BVerfGE 34, 9(19f).

(vi) Malaysia

Schedule IX of the Federal Constitution contains lists of the exclusive powers of the Federal and State Governments respectively, as well as a Concurrent List. Article 77 of the Constitution provides that the residual power is retained by the States:

> The Legislature of a State shall have power to make laws with respect to any matter not enumerated in any of the Lists set out in the Ninth Schedule, not being a matter in respect of which Parliament has power to make laws.

(vii) Mexico

Article 24 of the Federal Constitution provides that, "those competences that are not expressly conceded by this Constitution to the federal authorities are understood to be retained by the States".

(viii) Nigeria

Under the Federal Constitution of 1929, Chapter 1, Section 4, competences not listed in the list of exclusive powers of the Federal Government or of the concurrent powers of the Federal Government and the States are allocated to the States.

(ix) Pakistan

The 1973 Constitution of Pakistan, Article 142, provides that the residuum of power is in the Provinces.

(x) Switzerland

The Swiss Confederation was founded as a voluntary association of independent cantons which agreed to surrender certain of their sovereign powers to a federal government. Accordingly, the Federal Constitution, Article 3, provides that: "The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution, and, as such, they exercise all rights which are not delegated to the federal power".

(x11) USA

The United States Constitution of 1787 was a compact reached between thirteen independent states. Reflecting this voluntary creation of a federal government by sovereign entities, the Tenth Amendment to the U.S. Constitution provides that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

(xiii) USSR

The relationship between the Union Government and the individual Republics has been newly regulated by a law of 26 April 1990 which declares that the Republics have all the powers not expressly delegated to the Union. Likewise the Draft Union Treaty of 9 March 1991 (not yet in force) declares that each Republic party to the Treaty is a sovereign state and that "the USSR is a sovereign federal state formed as a result of a voluntary association of equal

republics and exercising state power within the limits of the powers vested in it by the parties to the Treaty." Part I, I First. Article 5 provides that the republics parties to the treaty "invest" the USSR with specific enumerated powers which may only be changed with the consent of all the republics. Finally, Article 10 of the draft treaty provides that the laws of a republic take precedence on its territory on all questions except those specifically ascribed to the Union's jurisdiction.

(xiv) Venezuela

Article 17, 7, of the Venezuelan Constitution confers upon the states power over "anything which, in conformity with this Constitution, does not pertain to national or municipal jurisdiction."

19. Though there are exceptions (as in the cases of Canada and India), the constitutions of the significant majority of federal States can thus be seen to proceed on the basis that the powers of the central or federal government are derived from the component units; that the

latter retain the residual powers; and that their legal positions cannot be altered without their consent.

20. In the light of contemporary constitutional practice, it is obvious that the current proposals made by the Greek Cypriot Community (as outlined in paragraph 16 above), which strongly suggest that the grant of powers would flow from the federal sovereign to the federated States rather than vice versa, are inconsistent with the historical and factual position of the two communities as separate sovereign entities. Just as the two communities on Cyprus agreed upon the division of governmental powers between themselves in a functional federation under the 1960 Constitution, so, in the formulation of any new federal constitution, it is the two communities which contribute the powers of government and will determine the division of those powers between the federal and the territorial governments.

4. TREATY MAKING BY THE COMPONENT UNITS OF FEDERAL STATES

21. We have also been asked an ancillary question, namely, whether it is in accord with contemporary federal constitutional practice for the component units within federal systems to retain, at any rate in part, the right to carry on relations (including treaty-making) directly with foreign states. The answer is that there is nothing doctrinally impossible about this -- it being simply a matter of inserting appropriate wording in the constitutional arrangements or in subsequently securing appropriate federal authority should this power not previously have been retained.

22. The capacity of the component units of a federal State to conclude treaties was recognized by the International Law Commission of the United Nations in 1962. In the Draft Articles on the Law of Treaties prepared by the Commission in that year, Article 3(2) provided:

In a federal State, the capacity of the member states of a federal union to conclude treaties depends on the federal constitution.

The fact that this provision does not appear in the Vienna Convention on the Law of Treaties as finally adopted cannot be read as suggesting that the Commission eventually concluded that it was wrong in principle. The omission merely reflects a difference of opinion in the Commission as to whether it was necessary to cover this aspect of capacity in a codifying convention.

23. The following are among the principal illustrations:

(i) Federal Republic of Germany

Article 32 of the Basic Law provides that insofar as member States (Lander) are competent to legislate, they may, with the approval of the Federal Government, conclude treaties with foreign States on matters in which the Lander have exclusive or concurrent legislative competence. In the former category of cases the agreements must be approved by

the Federal Government; in the latter category, they need not be. In 1965 a concordat was signed between the Land of Lower Saxony and the Holy See. In 1961 a convention concerning the protection of Lake Constance from pollution was concluded between the land of Wuerttemberg-Baden, the free State of Bavaria, Austria and Switzerland. In addition, Rhineland-Palantinate has concluded three agreements with Luxembourg concerning dams on international rivers and the establishment of a common park.

(11) Switzerland

Article 9 of the Federal Constitution of 1848 provides that:

> In special cases, the Cantons retain the right of concluding treaties with foreign Powers upon the subjects of public economic regulation. Cross-frontier intercourse, and police relations.

So long as those agreements

shall contain nothing repugnant to the confederation, or to the rights of the other cantons.

A great many such agreements have been made. For example, in 1874 Baden and Basle concluded an agreement providing for the establishment of a ferry and in 1908 Basle-Land and Aargan concluded an agreement with Baden for the establishment of a hydro-electric plant.

Since 1933, there have been seven cantonal agreements with foreign States. These agreements include double taxation treaties between Berne (1935), Neuchatol (1935), Aargau (1939) and France, and between Graubunden (1958) and Schaffhausen (1962) and Liechtenstein, agreements between Basel and the Bank or International Settlements (1932) and Geneva and the United Nations (1946) and an agreement between Schaffhausen and Baden (1947) on the distribution of electric energy.

(111) USA

Article 1, Section 10, clause 3 of the Constitution provides that states may enter into agreements or compacts

with a foreign power with the consent of Congress. Numerous federal laws expressly delegate treaty-making power to the states. See, for example, the United Nations Headquarters Agreement Resolution, 61 Stat. 756 (1947), section 203 of the Federal Civil Defense Act of 1950, 64 Stat. 1245, 1251 (1951); the Northeast Interstate Forest Fire Prevention Compact Act, 66 Stat. 71 (1952); and the International Bridge Act of 1972, 1972 U.S. Code of Cong. & Admin. News 847 (1972).

In addition, the Supreme Court has ruled by implication that a state may make some agreements with foreign governments without the consent of Congress, so long as they do not impinge upon the authority or the foreign relations powers of the United States, Virginia v. Tennessee, 148 U.S. 503, 519 (1893); Cuyler v. Adams, 449 U.S. 433 (1981). Accordingly, an agreement between two North Dakota municipalities acting pursuant to state authority and a Canadian municipality concerning an international drain was upheld by the North Dakota Supreme Court without Congressional approval, because it did not impinge on any federal powers, McHenry County V. Brady, 163 N.W. 540 (1917).

(iv) USSR

On 1 February 1944, the Soviet Union amended its constitution so that each Republic acquired "the right to enter into direct treaty relations with States, to conclude agreements with them, and to exchange diplomatic representatives with them". Subsequently, the Ukrainian S.S.R. and the Byelorussian S.S.A. each became separate Members of the United Nations and parties in their own name to many multilateral conventions. The draft Union Treaty of 11 March 1991 similarly provides:

> The republics are fully-fledged members of the international community. They are entitled to establish direct diplomatic, consular, trade, and other ties with foreign states, exchange official missions with them, conclude international treaties, and participate directly in the activity of international organizations without infringing the interests of the parties to the present treaty and their common interests or violating the USSR's international commitments.

24. Even in Canada, where the Canadian Constitution Act of 1982 places the residuum of power in the federal government and is silent on the treaty-making powers of the provinces, the provinces have in practice concluded -- with the implicit or explicit consent of the federal government -- a considerable number of international agreements both with U.S. states and foreign countries. For example, in 1965 Quebec and France signed an entente on cultural cooperation, to which the Canadian Government gave its consent. In 1970, the Canadian Government consented to the accession of the provinces of New Brunswick and Quebec to the Northeast Interstate Forest Fire Protection Compact along with the states of New Hampshire, Vermont, and Connecticut. T.I.A.S. No. 6825, 21 U.S.T. 415, 753 U.N.T.S. 46 (29 January 1970). Indeed, a 1974 study commissioned by the U.S. Department of State identified over 700 arrangements and agreements of varying degrees of formality concluded between Canadian provinces and U.S. states. See R. Swanson, State/Provincial Interaction: A Study of Relations Between U.S. States and Canadian Provinces (Canus Research Institute, August 1974).

25. It is therefore certainly commonplace under contemporary constitutional practice and not prohibited by

international law for the component units of a federal state to retain and exercise constitutional powers to conclude treaties and international agreements directly with foreign states.

5. SUMMARY

In short, our opinion is as follows:

(i) We consider that by reference to the facts the Turkish Cypriot Community participates in the negotiations with the Greek Cypriot Community as a sovereign entity and on a footing of complete equality. This means, in practical as well as conceptual terms, that the eventual division of powers between the federal government and the governments of the federated states will not represent a grant of powers by the federal government to the federated states nor will it involve any grant of powers by the Greek Cypriot Community to the Turkish Cypriot Community, or vice versa.

(ii) A federal solution which rests upon and acknowledges that the grant of powers is by the federated states to the federal government and that reserves to the

federated states any and all residual powers is in conformity with the predominant constitutional practice in federal systems.

(iii) So also would be an acknowledgement that each of the federated States may, in respect of specified classes of matter, retain the right to make treaties directly with foreign States.

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